

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-4087

United States Court of Appeals

For the Second Circuit.

SAMUEL H. SLOAN d/b/a SAMUEL H. SLOAN &
CO.,

Petitioner-Appellant.

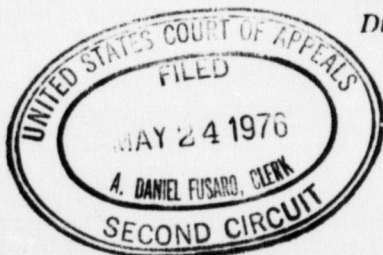
v.

SECURITIES AND EXCHANGE COMMISSION, et al.,
Respondents-Appellees.

A p p e n d i x

SAMUEL H. SLOAN
Appellant Pro Se
917 Old Trents Ferry Road
Lynchburg, Virginia 24503

Dick Bailey Printers, Inc., Tel.: (212) 447-5358



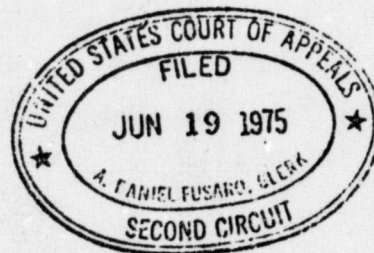
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TABLE OF CONTENTS

	<u>Page</u>
Full Record List	A1
Order for Public Proceedings Pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 Dated April 25, 1972	A14
Order Designating Hearing Examiner And Scheduling Hearing Dated May 30, 1972	A18
Order Designating Substitute Hearing Examiner Dated June 7, 1972	A19
Order Postponing Hearing And Scheduling Prehearing Conference Dated June 7, 1972	A20
Order On Stipulation And Date Of Hearing Dated June 16, 1972	A21
Order Postponing Hearing Dated July 7, 1972	A23
Order Postponing Hearing And Denying Motion For More Definite Statement Dated July 31, 1972	A24
Order on Motion for More Definite Statement Dated August 18, 1972	A27
Order Postponing Hearing Dated September 7, 1972 ...	A29
Order Postponing Hearing Dated October 12, 1972	A30
Order Granting Extension Dated November 22, 1972 ...	A31
Order Granting Extension Dated January 18, 1973	A32
Order Granting Extension Dated February 13, 1973 ...	A33
Initial Decision Dated April 24, 1973	A34
Order Granting Petition for Review Dated May 21, 1973	A49
Extension Order Dated July 3, 1973	A50
Findings and Opinion of the Commission	A51
Order Imposing Remedial Sanctions	A59

FULL RECORD LIST

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO.,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION, et al.,

Respondents.

No. 75-4087

ATTESTATION

I hereby attest that the attached are full, true and complete copies of documents numbers 1 - 114 listed below exclusive of document Number 87 the original of which is presently on file in this Court in Securities and Exchange Commission v. Samuel H. Sloan, Samuel H. Sloan & Co., No. 74-1436. I further attest that documents numbers 1 - 114 listed below comprise the record of this proceeding before the Securities and Exchange Commission:

75-4087

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
1	Transcript of Pre-hearing conference held before Administrative Law Judge Ralph Hunter Tracy on October 4, 1972.	1-18A
2	Transcript of Hearing before Administrative Law Judge Ralph Hunter Tracy on October 30, 1972.	19-196
3	Transcript of Hearing before Administrative Law Judge Ralph Hunter Tracy on October 31, 1972.	197-378
4	Transcript of Hearing before Administrative Law Judge Ralph Hunter Tracy on November 1, 1972.	379-467
5	Stipulation between counsel for the Division of Trading and Markets ("The Division") and counsel for Samuel H. Sloan and Samuel H. Sloan & Co. ("Sloan & Co.") (Division's Exhibit 1).	468-471
6	Attestation of Charles A. Moore, Deputy Records Officer of the Commission dated June 26, 1972. (Division's Exhibit 1A).	472
7	Letter dated January 14, 1971, from Kevin Thomas Duffy, Regional Administrator of the Securities and Exchange Commission to Samuel H. Sloan d/b/a Samuel H. Sloan & Co., (Division's Exhibit 2).	473-474
8	Balance Sheet of Sloan & Co. dated January 18, 1971. (Division's Exhibit 3).	475
9	Trial balance for Sloan & Co. as of January 18, 1971, abstracted by the Commission's staff from the records of Sloan & Co. (Division's Exhibit 4A).	476-478

A3

-3-

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
10	Copy of the trading account of Sloan & Co. as of January 18, 1971. (Division's Exhibit 4B).	479
11	Capital computation for Sloan & Co. as of at January 18, 1971 abstracted from the books and records of Sloan & Co. (Division's Exhibit 4C).	480
12	Trial balance for Sloan & Co. as at January 29, 1971 abstracted by the Commission's staff from the books and records of Sloan & Co. (Division's Exhibit 5A).	481
13	Copy of Sloan & Co.'s fails to deliver as of January 20, 1971 abstracted from the books and records of Sloan & Co. by the Commission's staff. (Division's Exhibit 5B).	482
14	Copy of the inventory of Sloan & Co. as of January 29, 1971, abstracted from the books and records of Sloan & Co. by the Commission's staff. (Division's Exhibit 5C).	483
15	Capital computation for Sloan & Co. as at January 29, 1971, prepared by the Commission's staff. (Division's Exhibit 5D).	484-486
16	Trial balance for Sloan & Co. as at February 26, 1971 abstracted from the books and records of Sloan & Co. by the Commission's staff. (Division's Exhibit 6A).	487

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
17	Listing of Sloan & Co.'s fails to deliver as at February 26, 1971. (Division's Exhibit 6B).	488-490
18	Listing of Sloan & Co.'s fails to receive as at February 26, 1971. (Division's Exhibit 6C).	491-494
19	Listing of inventory of Sloan & Co. as at February 26, 1971. (Division's Exhibit 6D).	495-497
20	Analysis of Trial Balance as at February 26, 1971, prepared by the Commission's staff. (Division's Exhibit 6E).	498-499
21	Letter from Robert W. Taylor & Co. to the New York Regional Office of the Commission dated July 29, 1971. (Division's Exhibit 7A).	500-506
22	Cover sheet, affirmation, accountant's certificate, answers to financial questionnaire as at June 30, 1971. (Division's Exhibit 7B).	507-518
23	Analysis by Commission's staff of financial reports as at June 30, 1971 (document 22, <u>supra</u>). (Division's Exhibit 7C).	519
24	Copy of trial balance of Sloan & Co. as at July 31, 1971. (Division's Exhibit 8A).	520-522
25	Copies of confirmations representing fails to deliver of Sloan & Co. as at July 31, 1971. (Division's Exhibit 8B).	523-559
26	Copies of confirmations representing fails to receive of Sloan & Co. as at July 31, 1971. (Division's Exhibit 8C).	560-577
27	Schedule of inventory of Sloan & Co. as at July 31, 1971. (Division's Exhibit 8D).	578-580

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
28	Computation and Schedule of fails to deliver. (Division's Exhibit 8E).	581-589
29	Analysis by Commission's staff of Sloan & Co.'s trial balance as at July 31, 1971. (Division's Exhibit 8F).	590-596
30	Copy of trial balance submitted by Sloan & Co. as at August 31, 1975. (Division's Exhibit 9A).	597-598
31	Schedule of inventory submitted by Sloan & Co. as at August 31, 1975. (Division's Exhibit 9B).	599-601
32	Schedule of fails to deliver of Sloan & Co. as at August 31, 1971. (Division's Exhibit 9C).	602-604
33	Schedule of fails to receive of Sloan & Co. as at August 31, 1971. (Division's Exhibit 9D).	605
34	Analysis by the Commission's staff of the trial balance submitted by Sloan & Co. as at August 31, 1971. (Division's Exhibit 9E).	606-608
35	Trial balance for Sloan & Co. as at September 30, 1971. (Division's Exhibit 10A).	609-610
36	Trading inventory for Sloan & Co. as at September 30, 1971. (Division's Exhibit 10B).	611-613
37	Schedule of fails to deliver for Sloan & Co. as at September 30, 1971. (Division's Exhibit 10C).	614-615
38	Schedule of fails to receive for Sloan & Co. as at September 30, 1971. (Division's Exhibit 10D).	616

A6

-6-

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
39	Analysis of Commission's staff of documents 35-38, <u>supra</u> . (Division's Exhibit 10E).	617
40	Trial balance for Sloan & Co. as at October 8, 1971. (Division's Exhibit 11A).	618-619
41	Schedule of trading positions for Sloan & Co. as at October 8, 1971. (Division's Exhibit 11B).	620-622
42	Schedule of fails to deliver for Sloan & Co. as at October 8, 1971. (Division's Exhibit 11C).	623
43	Schedule of fails to receive for Sloan & Co. as at October 8, 1971. (Division's Exhibit 11D).	624
44	Capital analysis of Sloan & Co. as of October 8, 1971, prepared by the Commission's staff. (Division's Exhibit 11E).	625
45	List of securities received from Sloan & Co. by J. S. Love & Co. (Division's Exhibit 12).	626-627
46	Trial balance for Sloan & Co. as at November 30, 1971. (Division's Exhibit 13A).	628-629
47	A schedule of inventory for Sloan & Co. as at November 30, 1971. (Division's Exhibit 13B).	630-632
48	Schedule of fails to deliver as at November 30, 1971. (Division's Exhibit 13C).	633
49	Analysis by Commission's staff of documents 46-48, <u>supra</u> . (Division's Exhibit 13D).	634-635

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
50	Trial balance for Sloan & Co. as at December 31, 1971. (Division's Exhibit 14A).	636-637
51	Schedule of inventory for Sloan & Co. as at December 31, 1971. (Division's Exhibit 14B).	638-640
52	Schedule of fails to deliver for Sloan & Co. as at December 31, 1971. (Division's Exhibit 14C).	641
53	Analysis by Commission's staff of trial balance for Sloan & Co. as at December 31, 1971. (Division's Exhibit 14D).	642-643
54	Trial balance for Sloan & Co. as at January 31, 1972. (Division's Exhibit 15A).	644-645
55	Schedule of trading positions of Sloan & Co. as at January 31, 1972. (Division's Exhibit 15B).	646-647
56	Schedule of fails to deliver for Sloan & Co. as at January 31, 1972. (Division's Exhibit 15C).	648
57	Analysis by Commission's staff of January 31, 1972 trial balance for Sloan & Co. (Division's Exhibit 15D).	649-650
58	Capital analysis of Sloan & Co. prepared by Commission's staff. (Division's Exhibit 16).	651-652
59	Analysis by Commission's staff of trading accounts of Sloan & Co. (Division's Exhibit 16A).	653-657
60	Photostatic copies of computer cards submitted to the National Quotation Bureau by Sloan & Co. (Division's Exhibit 17).	658-666
61	Promissory note from Terrence J. Duffy to Sloan & Co. (Division's Exhibit 18).	667

A8

-8-

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
62	Order to Show Cause and Affidavit filed in <u>Shearson, Hammill & Co., Inc. v. Samuel H. Sloan, et al.</u> , Supreme Court of State of New York Index No. 132172 (Division's Exhibit 19 for identification purposes only).	668-632
63	List of checks written by Joseph Iny to Samuel H. Sloan. (Division's Exhibit 20).	683-684
64	List prepared by Samuel H. Sloan of securities transactions with Joseph Iny. (Division's Exhibit 21).	685-686
65	[A copy of a Consent Order of Preliminary Injunction entered in <u>Securities and Exchange Commission v. Samuel H. Sloan, Samuel H. Sloan & Co.</u> , S.D.N.Y., No. 71 Civ. 2695. (Respondent's Exhibit A), appears in this record as document No. 88.]	748-754
66	Order for Public Proceeding Pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934.	687-690
67	Letter dated April 25, 1972, for the Secretary of the Commission to Samuel H. Sloan & Co.	691
68	Letter dated April 25, 1972, from the Secretary of the Commission to Samuel H. Sloan.	692
69	Answer of Samuel H. Sloan d/b/a Samuel H. Sloan & Co.	693-699
70	Division's Request for Hearing date.	700-703

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
71	Letter dated May 22, 1972 from Robert W. Taylor, Esquire, to the Secretary of the Commission requesting that Division's Request for Hearing date be amended.	704
72	Order Designating Hearing Examiner and Scheduling Hearing, dated May 30, 1972.	705
73	Order Designating Substitute Hearing Examiner dated June 7, 1972.	706
74	Order Postponing Hearing and Scheduling Prehearing Conference, dated June 7, 1972.	707
75	Letter dated June 6, 1972 from Robert W. Taylor, Esquire, to Administrative Law Judge Blair, requesting postponement of hearing and requesting a pre-hearing conference.	708
76	Order on Stipulation and Date of Hearing, dated June 16, 1972.	709-710
77	Order Postponing Hearing, dated July 7, 1972.	711
78	Notice of Motion for more Definite Statement and Affidavit in Support filed by counsel for Sloan & Co., dated July 21, 1972.	712-724
79	Affidavit in Opposition to a Motion for a More Definite Statement Pursuant to Rule 7(d), filed by the Division, dated July 26, 1972.	725-736
80	Order Postponing Hearing and Denying Motion for More Definite Statement, dated July 31, 1972.	737-739
81	Order on Motion for more Definite Statement, dated August 18, 1972.	740-741
82	Letter dated August 25, 1972 from William Nortman, Esquire, to Hearing Examiner Tracy.	742

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
83	Letter dated August 28, 1972 to Hearing Examiner Tracy.	743-744
84	Order Postponing Hearing, dated September 7, 1972.	745
85	Order Postponing Hearing, dated October 12, 1972.	746
86	Official Notice of Administrative Law Judge Tracy of: (1) Broker-Dealer file of Sloan & Co., No. 8-15750; (2) Injunction entered by United States District Court for the Southern District of New York in <u>Securities and Exchange Commission v. Samuel H. Sloan, Samuel H. Sloan & Co.</u> , 71 Civ. 2695; (3) Registration Statement of John Allmand Boats, Inc., No. 2-42848-1. Notice dated November 2, 1972.	747
87	[The original of the Broker-Dealer file of Samuel H. Sloan & Co. is presently on file in this Court as Exhibit One in the Record on Appeal of <u>Securities and Exchange Commission v. Samuel H. Sloan, Samuel H. Sloan & Co.</u> , C.A. 2, No. 74-1436.]	
88	Consent Order of Preliminary Injunction dated June 24, 1971 in <u>Securities and Exchange Commission v. Samuel H. Sloan, Samuel H. Sloan & Co.</u> , S.D.N.Y., 71 Civ. 2695.	748-754
89	Registration statement of John Allmand Boats, Inc. File No. 2-42848-1.	755-1016
90	Order Granting Extension, dated November 22, 1972.	1017

All

-11-

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
91	Division's Motion for an Extension of Time, dated November 22, 1972.	1018-1022
92	Division's Proposed Findings of Fact and Conclusion of Law.	1023-1049
93	Division's Brief in Support of Proposed Findings of Fact and Conclusion of Law.	1050-1103
94	Order Granting Extension, dated January 18, 1973.	1104
95	Letter dated January 18, 1973, from Office of Robert W. Taylor, Esquire to the Hearing Examiner requesting an extension of time in which to file proposed findings of fact and conclusion of law.	1105
96	Order Granting Extension of Time, dated February 13, 1973.	1106
97	Proposed Findings of Fact and Conclusion of Law filed by Robert W. Taylor, Esquire, in behalf of the respondents.	1107-1132
98	Division's Reply Brief.	1133-1157
99	Transmittal letter of Administrative Law Judge Tracy and accompanying Initial Decision.	1158-1173
100	Petition for Review of Initial Decision, dated May 8, 1973.	1174-1177
101	Order of Commission Granting Petition For Review, dated May 21, 1973.	1178
102	Letter dated June 8, 1973, from Robert W. Taylor, Esquire, to Secretary of the Commission requesting an extension of time in which to file brief for respondents.	1179-1180

A12

-12-

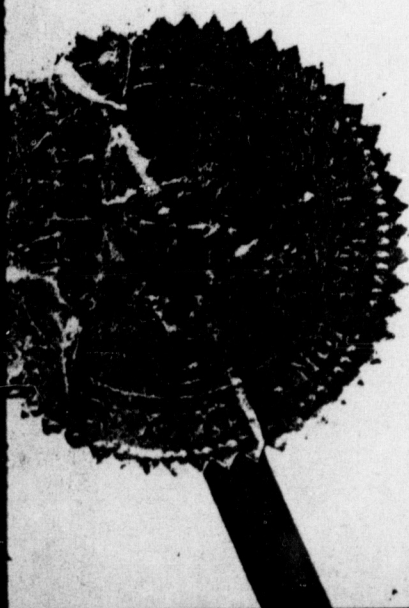
<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
103	Letter, dated June 19, 1973, from Robert W. Taylor, Esquire, to the Secretary of Commission enclosing photostat of Settlement and release of the matter of Samuel H. Sloan's claim against J. S. Love & Co., Inc.	1181-1183
104	Letter, dated June 26, 1973, from Thomas R. Beirne, Esquire, to Secretary of the Commission with attachments, stating the Division's opposition to respondent's petition to compel the Division to provide him with a copy of transcript.	1184-1206
105	Letter, dated July 3, 1973, from Secretary of the Commission to Robert W. Taylor, Esquire, advising him that he would be permitted to inspect transcript at New York Regional Office.	1207
106	Order granting extension of time for filing of brief in behalf of respondents.	1208
107	Memorandum on Behalf of Respondent.	1209-1223
108	Letter, dated July 13, 1973, from Thomas R. Beirne, Esquire, to the Secretary of the Commission advising that the Division opposed respondent's request that his counsel's letter of June 19, 1973 be appended to the record.	1224-1225
109	Division's Reply Brief.	1226-1239
110	Notice of Withdrawal as a Broker-Dealer submitted by Sloan & Co., dated September 14, 1973.	1240-1242
111	Letter, dated February 27, 1974, from Samuel H. Sloan to the Secretary of the Commission and enclosures.	1243-1269
112	Letter, dated March 15, 1974, from Thomas R. Beirne, Esquire, to the Secretary of the Commission opposing inclusion of letter of Samuel H. Sloan dated February 27, 1974, in the record.	1270-1273

<u>Document No.</u>	<u>Description</u>	<u>Page No.</u>
113	Letter dated April 7, 1974, from Samuel H. Sloan to the Secretary of the Commission in response to the March 15, 1974 letter of Thomas R. Beirne, Esquire.	1274-1277
114	Findings and Opinion of the Commission and Order Imposing Remedial Sanctions dated April 28, 1975.	1278-1286

Charles A. Moore
CHARLES A. MOORE
Records Officer

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dated: June 18, 1975



001-2680-1

Administrative Proceeding
File No. 3- 3680

RIA

A14

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

APR 25 1972

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

APR 26 1972

804031

304032

CTFD. NO.

In the Matter of

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO. (8-15750)

ORDER FOR PUBLIC PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND
15A OF THE SECURITIES EXCHANGE
ACT OF 1934

I

The Commission's public official files disclose that:

A. Samuel H. Sloan d/b/a Samuel H. Sloan & Co. (Sloan & Co.) a sole proprietorship with his principal place of business at 120 Liberty Street, New York, New York, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") since May 10, 1970.

B. Sloan & Co. is a member firm of S.E.C.O.

II

As a result of an investigation, the Division of Trading and Markets has obtained information which tends to show and it alleges that:

A. During the period from about January, 1971 and continuing to the present, Sloan & Co. has willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder in that Sloan & Co. has failed to accurately make, keep current or maintain certain of its books and records including, but not limited, to:

- (1) ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;
- (2) A securities record or ledger reflecting separately for each security as of the clearance dates of all "long" and "short" positions (including securities in safekeeping) carried by such member, broker or dealer for his account;

A15

- (3) Ledgers (or other records) reflecting securities failed to receive and to deliver;
- (4) Copies of all confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer; and
- (5) A record of proof of money balances of all ledger accounts in the form of trial balances.

B. During the period from about January 1971 to on or about January 31, 1972 with the exception of the month of March 1971, Sloan & Co. willfully violated Section 15(c)3 of the Exchange Act and Rule 15c3-1 thereunder in that Sloan & Co. made use of the mails and means and instrumentalities of interstate commerce to effect transactions in and to induce and attempt to induce the purchase and sale of securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange when Sloan & Co.'s aggregate indebtedness to all other persons exceeded 2,000 per centum of its net capital and Registrant did not have and did not maintain net capital of not less than \$5,000.

C. During the period from on or about October 10, 1970 to March 5, 1971, Sloan & Co. willfully violated Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, in that Sloan & Co. failed to file a report of its financial condition with the Commission for the calendar year 1970 within the time specified by said Rule.

D. During the period from on or about April 30, 1971 to on or about December 2, 1971, Sloan & Co. willfully violated Section 17(a) of the Exchange Act and Rule 17a-10 thereunder, in that Sloan & Co. failed to file a report of income and expenses with the Commission for the calendar year 1970 within the time specified by said Rule.

E. From on or about September 15, 1971, to the present, Sloan & Co. willfully violated Section 17(a) of the Exchange Act and Rule 17a-11 thereunder in that Sloan & Co. failed to telegraphically notify the Commission that it was not in compliance with the net capital rule (15c3-1), file within 24 hours a report of its financial condition or file a Form X-17a-11 report within the time specified by said Rule.

F. On June 24, 1971, the United States District Court for the Southern District of New York entered an order by consent, which order preliminarily enjoined Sloan & Co. and Sloan from conducting a business as a broker-dealer in securities at a time when Sloan & Co. or any other registered broker-dealer of which Sloan became a principal or controlling person was not in compliance with Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3 and 17a-4 thereunder.

A16

III

In view of the allegations made by the Division of Trading and Markets, the Commission deems it necessary that public proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and in connection therewith to afford respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest pursuant to Section 15(b) and 15A of the Exchange Act.

IV

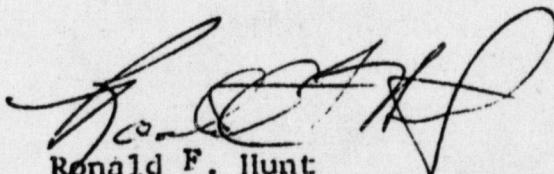
IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof be held at a time and place to be fixed and before a hearing examiner to be designated by further order as provided by Rule 6 of the Commission's Rules of Practice (17 CFR 201.6).

IT IS FURTHER ORDERED that each party file an answer to the allegations contained in the order for proceedings within fifteen (15) days after service upon him of said order provided by Rule 7 of the Commission's Rules of Practice.

If any party fails to file the directed answer or fails to appear at a hearing after being duly notified, such party shall be deemed in default and the proceedings may be determined against such party upon consideration of the order for proceedings, the allegations of which may be deemed to be true.

This order shall be served upon Sloan & Co. and Sloan personally or by certified mail forthwith.

By the Commission.



Ronald F. Hunt
Secretary

A17

SERVICE LIST

Rule 23 of the Commission's Rules of Practice provides that all amendments to moving papers, all answers, all motions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any initial decision, and all briefs shall be filed with the Commission and shall be served upon all other parties to the proceeding including the interested division of the Commission.

The attached Order of Proceedings has been sent to the following parties:

Kevin Thomas Duffy, Administrator
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007

Samuel H. Sloan & Co.
120 Liberty Street
New York, New York 10006

Samuel H. Sloan
164 East 7th Street
New York, New York 10009

3-3680-1⁷⁰⁵

A18

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

R/A

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUN - 1 1972

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 30, 1972

CTFD. NO. 804417

In the Matter of

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO.

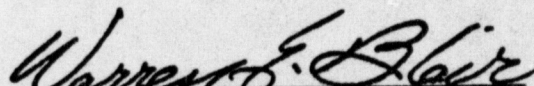
(8-15750)

ORDER DESIGNATING HEARING
EXAMINER AND SCHEDULING
HEARING

IT IS ORDERED that David J. Markun is designated as the Hearing Examiner to preside at the hearing in these proceedings and to perform other and related duties in accordance with the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the hearing in this matter commence at 11:00 A.M. on Monday, June 12, 1972, at the New York Regional Office of the Commission, 26 Federal Plaza, New York, New York 10007.

For the Commission, by its Chief Hearing Examiner, pursuant to delegated authority.


Warren E. Blair
Chief Hearing Examiner

A19

3-3680-1¹⁰⁶
R/A
ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUN - 9 1972

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 7, 1972

CTFD. NO. 804500

In the Matter of :

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO. :

(8-15750) :

ORDER DESIGNATING SUBSTITUTE
HEARING EXAMINER

To avoid possible conflicts with other assignments,

IT IS ORDERED that Ralph H. Tracy is designated in place
and stead of David J. Markun as the Hearing Examiner to preside
at the hearing in these proceedings and to perform other and
related duties in accordance with the Commission Rules of Practice.

For the Commission, by its Chief Hearing Examiner, pur-
suant to delegated authority.

Warren E. Blair
Warren E. Blair
Chief Hearing Examiner

A20

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

101
3-3680-1

R/A

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUN - 8 1972

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 7, 1972

CTFD. NO. 804546

In the Matter of :

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO. :

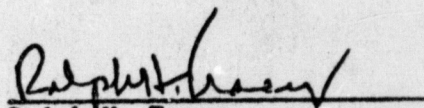
(8-15750) :

ORDER POSTPONING HEARING
AND SCHEDULING PREHEARING
CONFERENCE

Respondent having moved to postpone the hearing in this
matter and having requested a prehearing conference,

IT IS ORDERED that the hearing in this matter is postponed
to 2:00 P.M. on June 15, 1972; and

FURTHER ORDERED that pursuant to Rule 8(d) of the Commission's
Rules of Practice a prehearing conference be held at 11:00 A.M.
on June 15, 1972, at which time consideration will also be given
to whether a further postponement of the hearing is appropriate.


Ralph H. Tracy
Hearing Examiner

A21

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

103 2-5600-1

RJA

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

June 16, 1972

JUN 20 1972

304735

CTFD. NO. _____

In the Matter of
SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO.
(8-15750)

ORDER ON STIPULATION AND
DATE OF HEARING

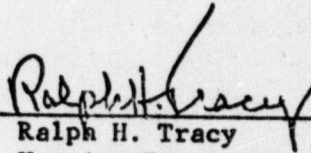
At a prehearing conference held on June 15, 1972, in response to respondent's request, it was agreed between the parties to enter into a stipulation concerning the following:

1. Authenticity and admissability of testimony of Samuel H. Sloan taken during investigation on 1-15-71; 3-8-71; 4-26-71 and 1-21-72;
2. Authenticity of preliminary injunction entered against Sloan & Co. by U.S. District Court for the Southern District of New York on 9-15-71;
3. Authenticity of affidavit of Samuel H. Sloan concerning net capital position of Sloan & Co.;
4. Authenticity of receipt by Sloan of SEC letter dated 1-14-71;
5. Authenticity of pink sheet quotations;
6. Authenticity of promissory note dated 9-16-71 in amount of \$10,273.58;

IT IS ORDERED that the above stipulation be reduced to writing, signed by the parties and offered for entry into the record at the hearing,

A22

IT IS FURTHER ORDERED that the hearing be scheduled to commence at 11:00 a.m. on July 14, 1972 at the New York Regional Office of the Commission, 26 Federal Plaza, New York 10007.



Ralph H. Tracy
Hearing Examiner

111 5-5600 R/

A23

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 7, 1972

JUL 10 1972

CTFD. NO. 804060

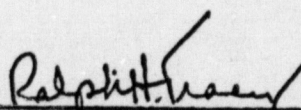
NY 100
31-5600

In the Matter of :
:
SAMUEL H. SLOAN d/b/a :
SAMUEL H. SLOAN & CO. :
:
(8-15750) :
:

ORDER POSTPONING HEARING

At a prehearing conference held on June 15, 1972, at which certain stipulations were entered into, it was agreed with respondents' counsel that commencement of the hearing in this matter would be postponed because of his absence from the country, accordingly,

IT IS ORDERED that the commencement of the hearing is postponed to 11:00 a.m. on August 14, 1972 at the New York Regional Office of the Commission, 26 Federal Plaza, New York, N.Y. 10007.



Ralph H. Tracy
Hearing Examiner

A24

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

3-3680-1

R/A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 31, 1972

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUL 31 1972

804544

CTFD. NO.

In the Matter of

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO.

(8-15750)

ORDER POSTPONING HEARING
AND DENYING MOTION FOR
MORE DEFINITE STATEMENT

The order for proceedings ("Order") entered on April 25, 1972 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Act") is based upon charges of the Division of Trading and Markets ("Division") that registrant, Samuel H. Sloan & Co. wilfully violated Sections 15(c)(3) and 17(a) of the Act and Rules 15c3-1, 17a-3, 17a-4, 17a-5, 17a-10 and 17a-11, thereunder.

On June 15, 1972 a prehearing conference was held which resulted in an order by the undersigned concerning specific items to which the parties had agreed to stipulate. In addition, on June 20, 1972, counsel for registrant met with counsel for the Division at which time all documents relating to Paragraphs A & B of the Order were reviewed.

Registrant has moved for a more definite statement as to paragraph A and E of the Order. Registrant seeks details regarding its own records concerning ledger, stock record, ledgers for Fail to deliver

A25

and Fail to receive, confirmations of customers and partners and trial balances. Registrant, also moves for continuation of the hearing pending compliance with the Order under this motion.

The Division, in opposition points out that the stipulation, which was the subject of the Order of June 16, 1972, has been executed and that on June 20, 1972 registrant was allowed to examine all net worth computations prepared by the Division.

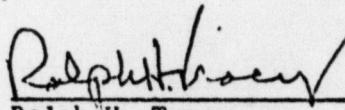
It is well-established that in a notice of hearing such as the one in question, a respondent is entitled to sufficient information concerning the charges and issues involved to permit him to make adequate preparation of a defense, but is not entitled to a disclosure of the evidence upon which the Division intends to rely for proof of those charges and issues. M.J. Reiter Co., 39 SEC 484 (1959); Keith Richard Securities Corp., 39 SEC 240 (1958). Nor is it necessary for the notice of proceedings to detail and itemize "all the particular acts, which together constitute the offense." Michael J. Meehan, 1 SEC 238, 240 (1935).

Under applicable principles it appears that in view of the pre-hearing conference and subsequent order concerning the stipulation of facts and the June 20th meeting with Division counsel registrant has been reasonably apprised of the charges against it, and it not entitled to the sought-for particulars as a matter of right.

Accordingly, IT IS ORDERED that the motion of registrant for a more definite statement is denied except to the extent it has already been complied with by the Division.

A26

IT IS ORDERED, further, that the hearing now scheduled to commence on August 14, 1972 is postponed to 11:00 A.M. on September 11, 1972, at the place heretofore designated.

A handwritten signature in dark ink, appearing to read "Ralph H. Tracy", is written over a horizontal line.

Ralph H. Tracy
Hearing Examiner

A27

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

740
3-3680-1
R/A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
August 18, 1972

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

AUG 18 1972
804891

CTFD. NO. _____

In the Matter of

SAMUEL H. SLOAN d/b/a
SAMUEL H. SLOAN & CO.

(8-15750)

ORDER ON MOTION FOR MORE
DEFINITE STATEMENT

The order for proceedings ("Order") entered on April 25, 1972 pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Act") is based upon charges of the Division of Trading and Markets ("Division") that registrant, Samuel H. Sloan & Co., wilfully violated Sections 15(c)(3) and 17(a) of the Act and Rules 15c3-1, 17a-3, 17a-4, 17a-5, 17a-10 and 17a-11, thereunder.

On June 15, 1972 a prehearing conference was held which resulted in an order by the undersigned concerning specific items to which the parties had agreed to stipulate. In addition, on June 20, 1972, counsel for registrant met with counsel for the Division at which time all documents relating to Paragraphs A & B of the Order were reviewed.

Registrant's motion for a more definite statement as to paragraph A and E of the Order was denied on July 31, 1972. Registrant

141

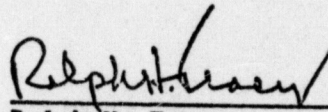
A28

has now renewed its motion as to the following particular documents:

1. Copies of computations as at the month end for:
1-18-71, 1-29-71, 2-26-71, 6-30-71, 7-31-71,
8-31-71, 9-30-71, 10-8-71, 10-29-71, 11-30-71,
12-2-71, 12-31-71 and 1-31-72.
2. Copies of long and short positions as marked to
the market on each of the respective dates.
3. Copies of all exhibits stipulated to.

In view of the prehearing conference and subsequent order concerning the stipulation of facts and the June 20th meeting with Division counsel at which time respondent was shown the requested documents, and upon consideration of all the circumstances,

IT IS ORDERED that the motion of respondent for a more definite statement is granted and that the requested documents be furnished forthwith.



Ralph H. Tracy
Hearing Examiner

A29

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

145
3-3680-1
R/A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 7, 1972

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

SEP - 8 1972
804250

CTFD. NO. _____

In the Matter of
:
SAMUEL H. SLOAN d/b/a
:
SAMUEL H. SLOAN & CO.
:
(8-15750)
:

ORDER POSTPONING HEARING

A conflict having arisen with another matter assigned to the
presiding Administrative Law Judge,

IT IS ORDERED that the hearing now scheduled to commence on
September 11, 1972 be, and it hereby is, postponed to Monday, October
16, 1972, at the same hour and place heretofore designated.

For the Commission, by its Chief Administrative Law Judge,
pursuant to delegated authority.

Warren E. Blair
Warren E. Blair
Chief Administrative Law Judge

A30

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 12, 1972

OCT 13 1972

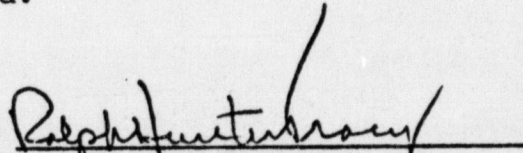
CTED NO. 80-712

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In the Matter of :
:
SAMUEL H. SLOAN d/b/a :
SAMUEL H. SLOAN & CO. :
:
(8-15750) :
:
-----x

ORDER POSTPONING HEARING

A conflict having arisen with another matter assigned to the undersigned presiding Administrative Law Judge,

IT IS ORDERED that the hearing now scheduled to commence on October 16, 1972 be, and it hereby is, postponed to Monday, October 30, 1972, at the same hour and place heretofore designated.


Ralph Hunter Tracy
Administrative Law Judge

3-3680-1
AIR

101

A31

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 22, 1972

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

NOV 24 1972
80-170

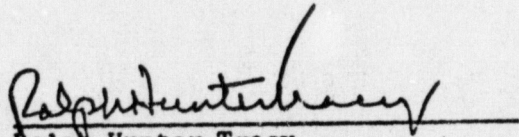
CITD. NO. _____

In the Matter of
SAMUEL H. SLOAN & CO., et al.
(8-15750)

ORDER GRANTING EXTENSION

The Division of Enforcement having requested an extension of time within which to file proposed findings of fact, conclusions of law and supporting brief, and no objection having been made by respondent to such extension,

IT IS ORDERED that the time within which the Division of Enforcement may file its proposed findings of fact, conclusions of law and supporting brief is extended to Monday, December 18, 1972. Respondent's counter-statement of proposed findings and conclusions and brief in support are to be filed on or before January 17, 1973, and the Division's reply brief, if any, is to be filed on or before February 1, 1973.


Ralph Hunter Tracy
Administrative Law Judge

1104

3-3680-1

A32

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

R/A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

January 18, 1973

JAN 22 1973

CTFD. NO.

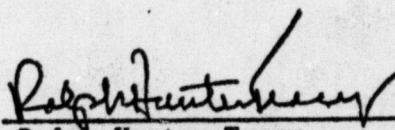
80-174-175
80-175

In the Matter of
SAMUEL H. SLOAN & CO., et al.
(8-15750)

ORDER GRANTING EXTENSION

Counsel for Respondent having requested an extension of time within which to file proposed findings of fact, conclusions of law and supporting brief, and no objection having been made by the Division of Enforcement to such extension,

IT IS ORDERED that the time within which the Respondent's counsel may file proposed findings of fact, conclusions of law and supporting brief is extended to Monday, February 12, 1973. The Division's reply brief, if any, is to be filed on or before February 27, 1973.


Ralph Hunter Tracy
Administrative Law Judge

1106

3-3680-1
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A33

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

February 13, 1973

FEB 14 1973

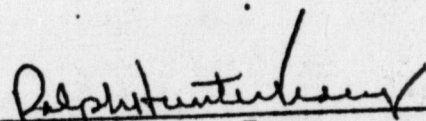
CTFD. NO. 801630

In the Matter of
SAMUEL H. SLOAN & CO., et al.
(8-15750)

ORDER GRANTING EXTENSION

Counsel for Respondent having requested an extension of time within which to file proposed findings of fact, conclusions of law and supporting brief, and no objection having been made by the Division of Enforcement to such extension,

IT IS ORDERED that the time within which the Respondent's counsel may file proposed findings of fact, conclusions of law and supporting brief is extended to Monday, February 26, 1973. The Division's reply brief, if any, is to be filed on or before March 13, 1973.


Ralph Hunter Tracy
Administrative Law Judge

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A34

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

FILED

APR 25 1973

SECURITIES & EXCHANGE COMMISSION

In the Matter of :
:
SAMUEL H. SLOAN d/b/a :
SAMUEL H. SLOAN & CO. :
:
(8-15750) :

INITIAL DECISION

Washington, D.C.
April 24, 1973

Ralph Hunter Tracy
Administrative Law Judge

A35

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :

SAMUEL H. SLOAN d/b/a :
SAMUEL H. SLOAN & CO. :

(8-15750) :

INITIAL DECISION

APPEARANCES:

Alan M. Rashes, Jerome M. Selvers and Thomas Beirne,
of the New York Regional Office of the Commission
for the Division of Enforcement.

Robert W. Taylor for Samuel H. Sloan and Samuel H. Sloan
& Co.

BEFORE:

Ralph Hunter Tracy, Administrative Law Judge

A36

THE PROCEEDING

This is a public proceeding instituted by an order of the Commission ("Order") dated April 25, 1972, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether, as charged by the Division of Enforcement ("Division")^{1/} Samuel H. Sloan ("Sloan") d/b/a Samuel H. Sloan & Co., ("Sloan & Co." or "registrant") willfully violated Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3, 4, 5, 10, and 11, thereunder, during various specified periods, and the remedial action, if any, that might be appropriate in the public interest.

The order included an allegation that on June 24, 1971, the U.S. District Court for the Southern District of New York had entered a consent decree temporarily enjoining respondents from violating certain of the foregoing counts.

Respondents were represented by counsel throughout the proceeding and proposed findings of fact and conclusions of law and briefs in support were filed by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

FINDINGS OF FACT AND LAWRespondents

Sloan is the sole proprietor of Sloan & Co., 120 Liberty Street, New York, New York, which has been registered with the Commission as a

^{1/} This Division was formerly the Division of Trading and Markets.

A37

broker-dealer pursuant to Section 15(b) of the Exchange Act since May 10, 1970. Registrant has never been a member of the National Association of Securities Dealers ("NASD").

Injunctions Chargeable to Respondents

Section 15(b)(5)(C) of the Exchange Act provides that one of the bases for revocation of a broker-dealer's registration or the imposition of lesser sanctions is the existence of a described permanent or temporary injunction issued by a court of competent jurisdiction.^{2/}

The Order alleges, and the record establishes, that on June 24, 1971, the U.S. District Court for the Southern District of New York entered a consent judgment preliminarily enjoining Sloan & Co. and Sloan from conducting a business as a broker-dealer in securities at a time when Sloan & Co. or any other registered broker-dealer of which Sloan became a principal or controlling person was not in compliance with the Commission's net capital and bookkeeping rules. In addition, the Court ordered Sloan to engage the services of a certified public accountant to prepare a certified report of the firm's financial condition, as of June 30, 1971, to be in the Commission's possession no later than July 31, 1971.

^{2/} Section 15(b)(5)(C) provides as follows:

"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to, becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated --

* * *

(Continued on page 3)

A38

Bookkeeping Violations

The record establishes that during the period from January, 1971 to April 25, 1972, registrant, as charged in the Order, committed a number of violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder by failing to maintain and to keep accurate and current certain required books and records.^{3/} At the time of an inspection of the books and records of registrant conducted by a Commission investigator on January 12, and 13, 1971, a number of deficiencies existed. The general ledger disclosing assets, liabilities, income and expense, and capital account, was not current; no account record of bank balances or income and expenses was being kept; the firm's trading account, the fail to deliver and the fail to receive accounts were not current; the Sloan capital account was only posted to July 19, 1970; no trial balances had been prepared; and the stock record was not in compliance. Registrant was informed of these violations by Commission letter of January 14, 1971, and requested to submit a trial balance supported by certain specified schedules. On January

(Footnote 2 continued)

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company; or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

^{3/} Section 17(a) of the Exchange Act, as pertinent here, requires brokers and dealers to make and keep current such books and records as the Commission may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rule 17a-3 specifies the books and records which must be maintained and kept current. Rule 17a-4 specifies the preservation of such records.

^{4/} Rule 17a-3(11) requires that "such trial balances and computations shall be prepared currently at least once a month."

A39

18, 1971, registrant submitted what purported to be a trial balance but the Commission investigator testified that a net capital computation could not be prepared from it so on January 25, 1971, he returned to registrant's office and prepared a computation of net capital as of January 18, 1971, using whatever books and records available.

Subsequent visits to registrant's office by another Commission investigator in March, April, May, June and August, 1971 disclosed that the books and records were not in compliance and on at least one occasion were not available for inspection. Furthermore, during the approximately sixteen month period charged in the Order it was necessary to average about three requests per month in order to obtain even the semblance of a trial balance from registrant.

Respondents argue that registrant "did maintain the books and records required under Section 17(a) and Rules 17a-3 and 17a-4." In support of this contention they assert that the testimony of the two Commission investigators concerning numerous violations of the record keeping rules was "so absolutely incredible as to defy understanding." However, the record does not support this contention. On the contrary, a careful review of their testimony, together with some 19 supporting exhibits, plus observation of their demeanor, leads to the conclusion that rather than being incredible their testimony was credible and worthy of belief.

The requirement that records be kept embodies the requirement that such records be true and correct.^{5/} Compliance with the rule relating to

5/ Lowell Niebur & Co., Inc., 18 SEC 471, 475 (1945)

A40

maintenance of books and records is regarded as an "unqualified statutory mandate" dictated by a broker-dealer's obligation to investors to conduct its securities business on a sound basis.^{6/}

Respondents' other principal argument is that there is no evidence that they willfully violated the record keeping requirements. The argument that any violation arising out of the failure to make and keep current registrant's books and records cannot be considered "willfull" is rejected. Willfullness for purposes of Section 15(b) of the Exchange Act does not require that a person know that he is breaking the law but only that he intended to do the act that resulted in the violation.^{7/}

Upon consideration of all the circumstances it is found that Sloan, d/b/a Samuel H. Sloan & Co., willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder as alleged in the Order.

Net Capital Violations

The Order charges that during the period from January 1971, until on or about January 31, 1972, with the exception of the month of March 1971, registrant willfully violated the net capital provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.^{8/}

^{6/} Billings Associates, Inc., Exchange Act Rel. No. 8217, p. 8 (Dec. 28, 1967)

^{7/} Hughes v. SEC, 174 F.2d 969, 977 (C.A.D.C. 1949); Churchill Securities Corp., 38 SEC 856, 859 (1959); Thompson Ross Securities Co., 6 SEC 1111, 1122 (1940).

^{8/} Section 15(c)(3) of the Exchange Act, insofar as here pertinent, prohibits securities transactions by a broker-dealer in contravention of the Commission's rules prescribed thereunder providing safeguards with respect to the financial responsibility of brokers and dealers. Rule 15c3-1 provides, subject to certain exemptions not applicable here, that no broker or dealer shall permit his aggregate indebtedness to all persons to exceed 2,000% of his net capital computed as specified in the rule or have a net capital of less than \$5,000.

A41

The record clearly establishes that during the relevant periods registrant was in violation of the Commission's net capital requirements and that the additional capital required to bring it into compliance on the dates indicated was as follows:

<u>Date</u>	<u>Per SEC</u>	<u>As Adjusted (a)</u>
1-18-71	\$28,016.70	No change
1-29-71	11,912.35	No change
2-26-71	15,961.36	No change
3-31-71	10,239.22 (b)	No change
6-30-71	24,222.03	19,221.96 (c)
7-31-71	70,864.99	70,064.99
8-31-71	16,588.73	15,789.33
9-30-71	11,529.69 (d)	10,729.69 (d)
10-8-71	8,345.49 (d)	7,545.49 (d)
10-29-71	18,253.50 (d)	12,453.50 (d)
11-30-71	9,810.10 (d)	4,010.79 (d)
12-31-71	13,480.42 (d)	4,557.22 (d)
1-31-72	718.23	

- (a) As a result of a prehearing conference the Division furnished its net capital computations and supporting data to registrant's counsel who is, also, its accountant. Prior to the evidentiary hearing Division's representative and registrant's accountant arrived at the adjusted figures.
- (b) The month of March originally showed net capital of \$7,760.78. However, this included \$18,000 of customer credit balance.
- (c) Prepared pursuant to order of the Court which issued the temporary injunction. (Supra p.2).
- (d) Does not include an alleged personal trading loss by Sloan which is in arbitration before the NYSE. Its inclusion would increase the net capital deficiency by \$13,000 for each period.

Respondents do not contend that registrant was at all times in compliance with the Commission's net capital rules. Rather, they argue that at a conference with representatives of the Commission's New York Office on July 28, 1971, an agreement was reached whereby the registrant would cease doing a retail business but would be allowed to liquidate accounts

A42

and transact personal business and that in accordance with this agreement registrant did cease doing business after July 28, 1971 and, therefore, could not be in violation of the net capital requirements after that date. In support of this argument they again attack the testimony of, and the evidence supplied by, the Commission investigators that Sloan was in fact actively engaged in consummating securities transactions after July 28, 1971. In addition, the argument is again advanced that any violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder was not willfull.

All of respondents arguments are rejected. The registrant's trading record supports the Division's contention that registrant engaged in new business in July, August and September, 1971. During the month of August, 1971, registrant transferred a number of securities resulting from the transaction of new business to the brokerage firm of J.S. Love & Co., while representing to the Commission staff that such securities were in the possession of Sloan & Co. ✓

In December 1971 and January, 1972, while in net capital violation, registrant applied to the National Quotation Bureau and had a number of securities listed in the pink sheets in an attempt to induce the purchase or sale of such securities while in violation of the Commission's net capital rules and while under a Court order enjoining such activities.

Sloan's disregard for the securities laws is well illustrated by his attitude towards the net capital requirements. In order to conceal registrant's true net capital situation he included as firm capital a \$10,000 customer credit balance for January, 1971; \$60,000 of customer's securities for February, 1971; and an \$18,000 customer credit balance for

A43

March 1971. For other periods he claimed a \$10,000 gift from his mother, which was not supported; improperly valued shares of stock; failed to keep records from which a proper determination of net capital could be ascertained; procrastinated in the production of books and records in order to delay an accurate examination; and was uncooperative in producing trial balances and other financial information. His testimony in the proceeding concerning his activities and his alleged efforts to comply with the securities laws is not worthy of belief.

Registrant's inability to properly determine its financial condition flows, at least in part, from its failure to comply with Section 17(a) of the Exchange Act and Rules 17a-3, 17a-3(a)(11) and 17a-4 thereunder and well illustrates the Commission's repeated emphasis on the requirement that books and records be kept current and accurate as being at the heart of the regulatory scheme, particularly as it bears significantly on the ability to determine whether other types of violations have occurred.^{9/} It is found that registrant and Sloan willfully violated the net capital provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

Failure to File Required Reports

Under the provisions of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, registrant's Form X-17A-5 for the year 1970, was due to be filed no later than November 23, 1970 as of October 10, 1970. No X-17A-5 report was filed by registrant for 1970 and Sloan admits in his answer that he failed to file such report. Sloan & Co. did file an X-17A-5 report as of January 29, 1971, on March 31, 1971. However, this was treated as

^{9/} Pennaluna & Company, Inc., et al., Securities Exchange Act Release No. 8063 (April 27, 1967); Palombi Securities Co., Inc., et al., 41 SEC 266, 276 (1962); Midland Securities, Inc., et al., 40 SEC 333, 339-340 (1960); Olds & Company, 37 SEC 23, 26-27 (1956).

A44

a 1971 filing and did not discharge Sloan from his obligation to file a report for 1970. Sloan testified that he was aware of the requirement to file a report on Form X-17A-5 for 1970 but that the only qualified accountant he was able to obtain to prepare the report was not able to because of his association with another broker-dealer.

That registrant cannot avoid the responsibility placed on it for filing an X-17A-5 report has been clearly expressed by the Commission in the case of John Munroe, 39 SEC 308 (1959) where it stated:

"The obligations to file financial reports annually, as well as other obligations set forth in the Act and the rules and regulations thereunder, are imposed upon registrants directly and are non-delegable. A registrant can obtain all the assistance he needs from clerks, accountants, attorneys, and others but he cannot instruct anyone to see to it that he is brought into compliance with applicable rules and regulations and feel that he has thereby fully discharged his obligations."

Sloan admits that for the period from ^{January 1} ~~April 30~~, 1971 to December 2, 1971, registrant failed to file a report of income and expenses with the Commission for the calendar year 1970 and thereby violated Section 17(a) of the Exchange Act and Rule 17a-10 thereunder. ^{10/}

Sloan expresses no contention whatever concerning the alleged ^{11/} violation of Rule 17a-11 under section 17(a) of the Exchange Act. However, the record establishes that no telegraphic notice or report of financial

10/ Rule 17a-10 provides that every broker or dealer registered pursuant to section 15 of the Exchange Act shall, not later than 120 days after the close of each calendar year, file a report of income and expenses and related financial and other information for such calendar year on Form X-17A-10.

11/ Rule 17a-11 provides that every broker-dealer subject to Rule 15c3-1 whose net capital at any time is less than the minimum required by any net capital rule to which he is subject shall give telegraphic notice of such deficiency to the Commission on the day it occurs and shall, within 24 hours thereafter, file a report of financial condition in accordance with details specified in the Rule.

A45

condition was ever received from registrant.

Accordingly, it is found that Sloan and registrant violated section 17(a) of the Exchange Act and Rule 17a-11 thereunder, as alleged in the Order.

In their brief respondents argue that registrant's report of income and expense required under Rule 17a-10 was filed on December, 2, 1971; that its financial report required under Rule 17a-5 for 1970 was filed on March 31, 1971, as of January 29, 1971 and marked "Amended"; that such reports were filed before the date of the Order and accepted by the Commission and, therefore, the alleged violations are merely technical in nature and the whole question becomes academic in view of the filings. Respondents do not address themselves to the alleged violation of Rule 17a-11.

There is no merit to respondents' contentions. The Commission has repeatedly expressed itself in no uncertain terms that "the requirement that annual reports be filed cannot be characterized as merely 'technical'",^{12/} and that "the requirement that annual financial reports be filed on time and in proper form is a keystone of the surveillance of registered broker-dealers with which we are charged in the interest of affording protection to investors, and full compliance with it is essential".^{13/}

Public Interest

Respondents' willfull violations require consideration of the sanctions which are necessary in the public interest. In this connection

^{12/} Samson, Roberts & Co., Inc., Exch. Act Rel. No. 7593 (May 4, 1965); see, also, Family Funds of New York, Inc., Exch. Act Rel. No. 7358 (June 30, 1964); John J. Murphy, 38 SEC 430, 432 (1958).

^{13/} W.E. Leonard & Company, Inc., 39 SEC 726, 727 (1960); see Olds & Company, 37 SEC 23, 26-7 (1956).

A46

the Division believes the conduct of respondents warrants a revocation of Sloan & Co.'s registration and a bar against Sloan's association with any broker-dealer. On the other hand, Sloan argues that no public interest can be served by extremely and severely sanctioning him or registrant, particularly since, he alleges, he has suffered a financial loss of \$30,000 resulting from his July 28, 1971, agreement with the Commission to cease doing business. In any event, respondents urge, any violations found herein were not willfull.

The violations found to have occurred herein are numerous, serious and continued over an extended period of time. Each violation has been previously discussed in detail but the cumulative effect must be taken into account in considering appropriate sanctions to be applied for the protection of investors. This is particularly true here, where one person, Sloan, was at all times responsible for the conduct of registrant's business. In considering mitigating circumstances there is no evidence in the record as to Sloan's alleged loss and it appears to be merely a projection of what he was allegedly prevented from earning by not being allowed to conduct business while not in compliance with the securities laws and under Court order. This is a self-serving statement and is given no weight in the circumstances. As to the question of willfullness, this has previously ^{14/} been dealt with in this decision. All of the violations previously found herein are found to have been willfull. It is well established that a finding of willfullness under section 15(b) of the Exchange Act does not

^{14/} See page 5 footnote 7 supra.

A47

require an intent to violate the law and that it is sufficient that a respondent intentionally engage in conduct which constitutes a violation. ^{15/}

The record of the registrant and Sloan, as evidenced by the violations found in this proceeding, reflects an unwillingness or a lack of capacity to operate as a broker-dealer in conformity with applicable laws and regulations. The impression imparted by Sloan through his actions as reflected by the record and his appearance as a witness is that of an individual who has no comprehension of what is required to properly manage a securities business. The fact that it was necessary for Commission staff members to make innumerable visits and inquiries in an effort to obtain compliance on the part of registrant; Sloan's uncooperative attitude towards such efforts; the necessity of a Court order and a proceeding in an endeavor to prevent violations inimical to investors indicate the unlikelihood that respondents will observe the Commission's rules applicable to the conduct of a broker-dealer business. Therefore, under the circumstances, it is concluded that the registration of registrant should be revoked and that Sloan should be barred from association with any broker-dealer. ^{16/}

ORDER

Accordingly, IT IS ORDERED that the registration as a broker-dealer of Samuel H. Sloan & Co. is revoked and that Samuel H. Sloan is barred from association with a broker-dealer.

^{15/} Dunhill Securities Corporation, Exch. Act Rel. No. 8563, p. 5 (July 14, 1969); Tager v. SEC, 344 F.2d, 5,8, (CA 2, 1965)

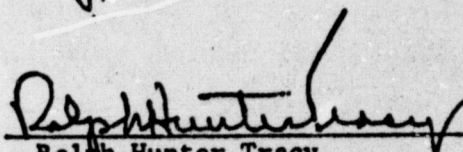
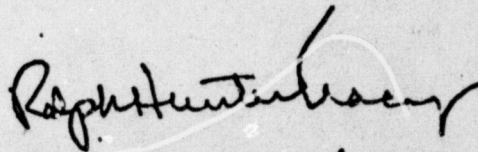
^{16/} It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. Fink v. SEC (C.A. 2, 1969), 417 F.2d 1058, 1060; Vanasco v. SEC, (C.A. 2d, 1968) F.2d 349, 353.

A48

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c) determines on its own initiative to review this initial decision as to him.

If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.^{17/}


Ralph Hunter Tracy
Administrative Law Judge

Washington, D.C.
April 24, 1973

17

To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.

3.5680-1
R/A

A49

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
May 21, 1973

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

MAY 24 1973

CTFD. NO. 4 804505

In the Matter of
SAMUEL H. SLOAN
d/b/a
SAMUEL H. SLOAN & CO.
(8-15750)

Securities Exchange Act of 1934 -
Sections 15(b) and 15A


ORDER GRANTING
PETITION FOR
REVIEW

The petition of Samuel H. Sloan, doing business as Samuel H. Sloan & Co., for review of the administrative law judge's initial decision is granted.

Respondent may file his brief within 30 days after service of this order. The Division of Enforcement may file its brief within 30 days after service of the respondent's brief.

For the Commission, by the Office of Opinions and Review, pursuant to delegated authority.

the Office of Opinions and
authority.


Ronald F. Hunt
Secretary

1208

3-3680-1

R/A

A50

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
July 3, 1973

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

JUL - 5 1973

CIFD. NO. 804235

In the Matter of :

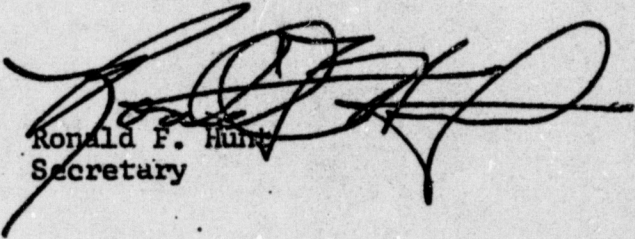
SAMUEL H. SLOAN d/b/a :
SAMUEL H. SLOAN & CO. :

EXTENSION ORDER

Pursuant to the request of counsel for Respondents;

IT IS ORDERED that the time within which Respondents may
file a brief in the above matter is hereby extended to July 20,
1973.

For the Commission, by its Secretary, pursuant to
delegated authority.


Ronald F. Hunt
Secretary

1278 3-3680-1
RJA

A51

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 11376/April 28, 1975

Admin. Proc. File No. 3-3680

In the Matter of :
:
SAMUEL H. SLOAN :
doing business as :
SAMUEL H. SLOAN & CO. :
120 Liberty Street :
New York, New York :
(8-15750) :

SECURITIES & EXCHANGE COMM.
MAILED FOR SERVICE

APR 30 1975

804363

CTFD. NO

804366

FINDINGS AND OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Where registered broker-dealer willfully violated Exchange Act's recordkeeping, net capital and reporting provisions and had also been enjoined from violating certain of those provisions as well as those requiring that records be made available for examination by Commission representatives and precluding the initiation of quotations without specified information, held, public interest requires revocation of broker-dealer registration, and bar of sole proprietor from association with any broker-dealer.

APPEARANCES:

Robert W. Taylor for Samuel H. Sloan, doing business as Samuel H. Sloan & Co.; and Samuel H. Sloan, pro se.

William D. Moran, William Nortman, Thomas R. Beirne, Alan M. Rashes and Jerome M. Selvers. for the Division of Enforcement of the Commission.

I. BACKGROUND

This case deals with the back office operations of a small securities firm in New York City. Finding serious deficiencies in those operations and an injunction based thereon, the administrative law judge revoked the broker-dealer registration of Samuel H. Sloan & Co. ("registrant"), and barred Samuel H. Sloan, registrant's sole proprietor, from association with any broker or dealer. 1/ Respondent's petition for review of that decision brings the case to us. 2/

- 1/ Registrant became registered with us in May 1970 as a partnership consisting of Sloan and another person. The other partner withdrew from the firm in January 1971, making Sloan its sole proprietor. Sloan thereafter sought to have registrant registered as a sole proprietorship, but this was not accomplished because of defective filings. Hence registrant is still carried on our records as a partnership although now wholly owned by Sloan. Accordingly, we shall for present purposes treat registrant as a sole proprietorship.
- 2/ Briefs were filed with us by respondent and our Division of Enforcement. Our findings are based upon an independent review of the record.

This administrative proceeding is closely intertwined with a judicial one. On our complaint, the United States District Court for the Southern District of New York preliminarily enjoined respondent on June 24, 1971, with his consent, from effecting transactions while registrant was not in compliance with the recordkeeping and net capital provisions under the Securities Exchange Act. 3/ Thereafter the instant proceeding was instituted. It was based on the preliminary injunction and on specified violations, most of which had also been alleged in the injunctive action. 4/ Following the issuance of the administrative law judge's initial decision which took cognizance of the preliminary injunction, the court in January 1974, after a trial, entered a permanent injunction. 5/

II. RECORDKEEPING VIOLATIONS

We find, as did the administrative law judge, that registrant willfully violated the recordkeeping provisions of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. 6/ A broker-dealer inspection conducted by our staff in January 1971 (about eight months after registrant's registration became effective) revealed various infractions in this area. Following such inspection, registrant was kept under close surveillance with frequent visits being made by our staff from January to August 1971.

The initial inspection disclosed, among other things, that capital, income and expense items were not properly recorded in registrant's general ledger; that the stock record was not kept current; that there was no account record of bank balances; and that no trial balance had been prepared. Stating that the inspection showed that respondent's records did not comply with our requirements and afforded no basis for establishing his financial position, our staff asked Sloan to produce a trial balance and other data. He furnished something. But no capital computation could be made from what he submitted.

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- 3/ S.E.C. v. Sloan, 71 Civil 2695. Respondent consented to the entry of the preliminary injunction, without either admitting or denying the allegations in our complaint.
- 4/ The Securities Exchange Act (Sections 15(b)(5) and (7)) authorizes us to impose remedial sanctions if we find it in the public interest to do so and that any respondent (1) is permanently or temporarily enjoined by any court from engaging in any conduct in connection with broker-dealer activities or the purchase or sale of securities, or (2) has willfully violated any provision of the Exchange Act or rules thereunder.
- 5/ Sloan's appeal from the permanent injunction was dismissed for want of prosecution on March 27, 1975. S.E.C. v. Sloan, Docket No. 74-1436 (C.A. 2).
- 6/ The administrative law judge also found willful violations of the record-preservation provisions of our Rule 17a-4 under Section 17(a). We do not agree. We do not consider that the failure to preserve records, as required by Rule 17a-4, constitutes a separate and additional infraction once a violation has been found based upon a failure to make those same records, as required by Rule 17a-3. L. C. Fisher Company, Inc., Securities Exchange Act Release No. 10259 (June 29, 1973), 2 SEC Docket 81.

A53

34-11376

A subsequent examination was made on February 25. It disclosed that the stock record and customer ledger were not up-to-date, and that the income and expense account was not properly maintained. A March 19 examination revealed a capital contribution on the books of \$58,175 when, in fact, no such contribution had been made.

On April 8 our investigator was once more in respondent's office. But he could not conduct an examination. According to him, Sloan said "he had no books, per se" -- all he had were debit and credit slips pending the receipt of "machine runs" from a bookkeeping service that used the slips to produce his records. From those slips our investigator was unable to prepare a trial balance. Having received the March 31 trial balance eleven days after his April 8 request for it, he returned to registrant's office on May 6 to verify it. But he could not do so. He was unable to obtain the stock record and daily blotter. On August 10 he went to registrant's office to make an inspection. But the books were unavailable. 2/ When he was able to make an inspection two days later, he found the general ledger posted only through July 31.

The foregoing chronicle shows extensive and persistent recordkeeping deficiencies during the first eight months of 1971. 8/ Moreover, computations of net capital during that year were not prepared as required. 9/ And our staff generally had to make about two or three requests for each trial balance it obtained from registrant. 10/

III. NET CAPITAL VIOLATIONS

We find, as did the administrative judge, that registrant willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder by effecting securities transactions and attempting to induce them when registrant's aggregate indebtedness exceeded 2,000% of registrant's net capital.

Net capital deficiencies ranging from \$718 to \$70,064 were found by the administrative judge on ten dates in 1971 and on an eleventh date in January of 1972. 11/ And respondent does not challenge those findings.

2/ Our inspector testified he was told respondent's accountant had them.

8/ Sloan's claim that he gave our staff certain papers (a deposit slip, a trial balance, and a stock record) has no bearing on these deficiencies.

9/ Net capital computations, as well as trial balances, are required by Rule 17a-3(11) to be "prepared currently at least once a month."

10/ Ultimately, however, it obtained almost all of the trial balances it requested.

11/ He found the following deficiencies on the dates set forth below:

<u>1971</u>		<u>1971</u>	
Jan. 18	\$28,016	Oct. 8	\$7,545
Jan. 29	11,912	Nov. 30	4,010
Feb. 26	15,961	Dec. 31	4,557
June 30	19,222		
July 31	70,064	<u>1972</u>	
Aug. 31	15,789	Jan. 31	718
Sept. 30	10,729		

A54

34-11376

What he attacks is the administrative judge's finding that he engaged in so-called "new" business from the end of July to September. He claims that such business as he did in that period consisted entirely of liquidating his long positions and covering his short positions. That, he says, was permissible under an agreement that he had reached with our staff on July 28, which allowed him to close out existing positions but precluded him from conducting new business.

But Sloan's own testimony shows that he engaged in the securities business in the usual unrestricted sense from January to July 28, 1971. And in January of 1972 he inserted quotations for various securities in the sheets published by the National Quotation Bureau, Inc. In view of registrant's net capital deficiencies in January, February, June and July, 1971, 12/ and in January of 1972, during those periods registrant clearly violated the Exchange Act's net capital requirements. 13/ It is equally clear that those violations were willful 14/ as that term is used for Exchange Act purposes. 15/

IV. NONCOMPLIANCE WITH REPORTING REQUIREMENTS

Respondent's Rule 17a-5 report of financial condition for 1970 and his report of income and expenses under Rule 17a-10 for the same year were admittedly filed late. 16/ Hence registrant willfully violated

12/ Respondent admits that his net capital was deficient during this period. He states that under his July 28 agreement with our staff "he was to be permitted to correct his ... net capital deficiencies by conducting a limited securities business." (Emphasis added.)

13/ Section 15(c)(3) prohibits a broker-dealer not only from effecting transactions, but from attempting to induce them, in contravention of our rules. Hence a securities dealer whose net capital is deficient is barred from inserting quotations in the sheets.

14/ An act is "willful" within the meaning of that word as used in Section 15(b) of the Exchange Act even if the actor does not intend to violate the law. The act which constitutes the violation is "willful" whenever the actor intends to do that which he did. Tager v. S.E.C., 344 F.2d 5, 8 (1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 802-3 (1965).

15/ We think it unnecessary to reach certain other net capital infractions alleged in the order for proceedings and found by the administrative judge.

16/ Under Rule 17a-5, as then in effect, a broker-dealer was required to file his report of financial condition not more than 45 days after the date of the report. The rule further specified that the date of his first report should be from one to five months after his registration became effective. Since registrant became registered on May 10, 1970, he was required to file his report by November 1970. But he himself says it was not filed until March 1971.

Rule 17a-10 requires that a report of income and expenses and related information be filed not later than 120 days after the close of the calendar year. Although it was required to be filed by April 1971, respondent says he did not do so until December 1971.

A55

34-11376

Section 17(a) of the Exchange Act and Rules 17a-5 and 17a-10. 17/

V. INJUNCTION

As noted at the outset, the preliminary injunction on which this proceeding was initially based has now become permanent. The permanent injunction, unlike the preliminary one, was entered after a trial. On the basis of the evidentiary record before it, the court found willful violations of our recordkeeping and net capital provisions, in a number of instances the same or substantially the same as those that we have found on the basis of the record before us. 18/ Those judicial findings show a continual pattern of recordkeeping and net capital violations including some between May 1973 and January 1974, a period subsequent to that involved in these proceedings. 19/

VI. OTHER MATTERS

Sloan says that institution of the earlier injunctive action constituted an election by us of the forum in which to proceed against him. 20/ That is not so. 21/ The Exchange Act provides several parallel and compatible procedures for the attainment of its objectives, and resort to one avenue does not preclude the use of another. 22/ The injunctive and administrative remedies serve different purposes, one restrains further violative

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- 17/ Registrant also willfully violated Section 17(a) of the Exchange Act and our Rule 17a-11 thereunder from September 15, 1971 (the date on which that rule went into effect) until January of 1972. That rule requires that a broker-dealer give the Commission telegraphic notice of his net capital deficiency on the day it occurs and, within 24 hours, file a report of financial condition. The administrative judge found that registrant never furnished any such notice or report. And no exception has been taken to this finding.
- 18/ 369 F. Supp. 996 (1974).
- 19/ Among other things, the court found that since August 1973 (the opinion issued in January 1974) respondent had not made his books and records available for inspection by our staff, "although numerous efforts were made by the Commission to arrange such an inspection." It also found net capital violations in May and August 1973.
- 20/ He also asserts that attorneys on our staff engaged in unprofessional conduct. But most of these charges relate to the injunctive proceedings. Hence they are irrelevant here. Nothing has been alleged that goes to the merits of the matter before us.
- 21/ Kamen & Company, 43 S.E.C. 97, 108 n. 17 (1966); A. G. Bellin Securities Corp., 39 S.E.C. 178, 186 (1959). See also Lile & Co., Inc., 42 S.E.C. 664, 670 (1965). Compare United States v. Kordell, 397 U.S. 1, 11 (1970): "It would stultify enforcement of federal law to require a governmental agency ... invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial."
- 22/ See Clinton Engines Corporation, 41 S.E.C. 408, 412-413 (1963); A. J. White & Co., Securities Exchange Act Release No. 10645 (February 15, 1974), 3 SEC Docket 550.

activity, the other seeks to determine whether it is in the public interest to exclude somebody from the securities business or to limit his activities in it. Far from being a barrier to administrative action, an injunction is an express and distinct ground for such action. 23/

VII. PUBLIC INTEREST

Respondent argues that the revocation and the bar imposed by the administrative judge are excessive and unwarranted. We disagree. 24/ Sloan's

23/ Sections 15(b)(5) and (7) of the Exchange Act summarized in n. 4, supra.

Respondent argues that the text of the Exchange Act is of no moment because the whole thing is unconstitutional. It is not for us to pass on that. Having been instructed by Congress to administer the Act, we are constrained to assume that statute is valid unless and until the courts hold otherwise. See Milton J. Wallace, Securities Exchange Act Release No. 11252 (February 14, 1975), 6 SEC Docket 300, 301; Mutual Fund Distributors, Inc., 41 S.E.C. 174, 181 (1962); Walston & Co., 5 S.E.C. 112, 113 (1939). Nevertheless, we think it appropriate to note that respondent's constitutional contentions are nothing less than an attack on all federal administrative law since they assume that Congress cannot vest this and other federal agencies with quasi-legislative and quasi-judicial powers, and that respondent cites nothing (other than his own ideas about the Constitution) in support of this radical position. We also note that the Supreme Court seems to take a different view. See Butz v. Glover, 411 U.S. 182 (1973) where the court cited with approval Hillier v. S.E.C., 429 F.2d 856, 858-859 (C.A. 2, 1970) and Dlugash v. S.E.C., 373 F.2d 107, 110 (C.A. 2, 1967). 411 U.S. at 187.

24/ Respondent says that he rejected a settlement calling for a 60-day suspension suggested by our staff prior to the hearings. But the asserted willingness of our staff to recommend that we accept a 60-day suspension for purposes of settlement (only we, not our staff, can accept an offer of settlement -- see Rule 8(a) of our Rules of Practice) is irrelevant. As we said in Haight & Company, 44 S.E.C. 481, 512-513 (1971), affirmed without opinion (C.A.D.C. June 30, 1971): "In settlement cases, where as a rule there is no admission of violations, we take into account pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings." Here, however, the record before us is fully developed. And it establishes various violations. Cf. Security Planners Associates, Inc., 44 S.E.C. 738, 743-744 (1971). Sloan's idea that a settlement proposal by our staff sets some sort of a ceiling on the sanction that can be imposed after a record has been developed is fallacious. Such a rule would undermine the settlement process that the Administrative Procedure Act seeks to encourage. That statute provides that "The agency shall give all interested parties opportunity for - (1) the submission and consideration of ... offers of settlement, or proposals of adjustment. ..." 5 U.S.C. § 554 (c). See also First Detroit Securities Corporation, Securities Exchange Act Release No. 10706 (March 27, 1974), 3 SEC Docket 752, 753. If respondents were assured that a trial could never result in a sanction more severe than the one suggested by our staff in settlement discussions, they would have little, if any, incentive to settle. And even if we were otherwise inclined to give some slight weight to an abortive settlement proposal made by our staff, we could not properly do so in this case. Here we have facts and circumstances before us that were unknown to and could not possibly have been foreseen by our staff at the time of the settlement talks.

violations are neither trivial nor technical. They involve flagrant and long-continued breaches of significant duties imposed on persons in the securities business. 25/

Hence we find, as did the administrative judge, that it is in the public interest to revoke registrant's broker-dealer registration 26/ and to bar Sloan himself from association with any broker or dealer. In arriving at that conclusion we have given some weight to the fact that in January of this year Sloan was again enjoined on our complaint. That second injunction:

(A) Restrains Sloan from removing, destroying, or altering the books and records required by Section 17(a) of the Exchange Act and our rules thereunder;

(B) Orders him to permit our staff to make an immediate examination of those records in an easily accessible place; and

(C) Restrains him from initiating quotations for over-the-counter securities when he lacks the information required by our Rule 15c2-11 under Section 15(c)(2) of the Exchange Act. 27/

Sloan's own papers in the second injunctive suit show his continuing disposition to disregard or defy the rules governing registered broker-dealers. He glories in having submitted "more than 350" quotation applications "in the face of an admonition by the S.E.C. that the submission of these forms constituted a violation of its rules." And in an affidavit submitted to the Court of Appeals he has said:

"I do not intend to comply with the ... injunctive order. I am sure that both Judge Ward [the district judge] and the S.E.C. realize that this is the case. However, I would much prefer to have this matter decided

25/ See Blaise D'Antoni Associates, Inc. v. S.E.C., 289 F.2d 276, 277, (C.A. 5, 1961) ("The net capital rule is one of the most important weapons in the Commission's arsenal to protect investors."); Fox Securities Company, Inc., Securities Exchange Act Release No. 10475, 2 SEC Docket 667, 669 (November 1, 1973) ("accurate and current records are essential to enable a broker-dealer to determine compliance with the net capital and other requirements."); Wanda O. Olds, 37 S.E.C. 23, 26 (1956) ("The requirements that books be kept current and financial reports be filed on time and in proper form are important"); Scientific Investors Corporation, 41 S.E.C. 618, 619 (1963) ("Reports are important not only to inform investors but because they may open avenues of inquiry which may well lead to collateral information having a direct bearing upon the broker-dealer's compliance with other rules of the Commission).

26/ We therefore deny his request for withdrawal of registrant's broker-dealer registration.

27/ S.E.C. v. Sloan, 74 Civil 5729 (U.S.D.C., S.D.N.Y.). Sloan's appeal from the second injunction is pending before the United States Court of Appeals for the Second Circuit. Yet the fact remains that a court of competent jurisdiction found the second injunction appropriate and that it did so over Sloan's vehement opposition. That is a circumstance to be considered in assessing the requirements of the public interest. Compare Summit Equities Corp., Securities Exchange Act Release No. 10366 (August 26, 1973), 2 SEC Docket 347.

... quickly so as to reduce the likelihood
that I will actually be held in contempt. ...
Clearly, if I am actually held in contempt, I
will suffer irreparable harm." 28/

An appropriate order will issue.

By the Commission (Chairman GARRETT and Commissioners LOOMIS, EVANS and
SOMMER); Commissioner POLLACK not participating.

George A. Fitzsimmons
Secretary

28/ The affidavit in which this statement appears was made in support
of Sloan's unsuccessful application for a stay of the second injunc-
tion. Sloan's earlier petition to the Court of Appeals for a writ
of mandamus against the district judge is in the same vein. After
stating that "the S.E.C. has known ... that the petitioner was not
going to make his books and records readily available," he goes on
to say: "It is no secret that the petitioner has not paid ... any
... S.E.C. assessment in more than two years. It is no secret that
the petitioner has not filed any financial statements with the S.E.C.
for two years."

A59

34-11376

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 11376/April 28, 1975

Admin. Proc. File No. 3-3680

In the Matter of :
:
SAMUEL H. SLOAN :
doing business as :
SAMUEL H. SLOAN & CO. :
120 Liberty Street :
New York, New York :
(8-15750) :

ORDER IMPOSING REMEDIAL SANCTIONS

Proceedings were instituted under the Securities Exchange Act to determine what, if any, remedial action is appropriate in the public interest with respect to Samuel H. Sloan, doing business as Samuel H. Sloan & Co.

Hearings were held before an administrative law judge. He submitted an initial decision. Respondent's petition for review was granted, and briefs were filed by him and by the Commission's Division of Enforcement. Respondent requested withdrawal of the broker-dealer registration of Samuel H. Sloan & Co.

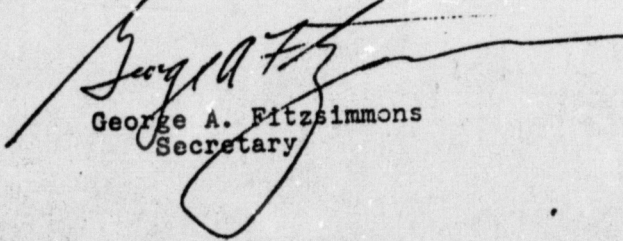
The Commission has this day issued its Findings and Opinion. On the basis of such Findings and Opinion, it is

ORDERED that the request for withdrawal of the registration of Samuel H. Sloan & Co. as a broker and dealer be, and it hereby is, denied; and it is further

ORDERED that the aforesaid broker-dealer registration be, and it hereby is, revoked; and it is further

ORDERED that Samuel H. Sloan be, and he hereby is, barred from being associated with any broker or dealer.

By the Commission.


George A. Fitzsimmons
Secretary

SLOAN Sloan v. SEC

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of Feb.
1976 deponent served the within Appendix upon:

Thomas L. Taylor, III, Esq.
Securities and Exchange Commission

attorney(s) for

Appellees

in this action, at
Washington, D.C. 20549

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey

Sworn to before me, this 23
day of Feb., 1976.

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976